IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 2962 of 2004(A)

AGAINST THE ORDER DATED IN SC 455/03 & SC 456/03 IN SC.168/2003 of SESSIONS COURT, PALAKKAD

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PETITIONER: COMPLAINANT

STATE OF KERALA.
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SUO MOTU
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

RESPONDENTS:

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1. THOMAS, S/O. POULOSE,
KULANGARA, CHITTUR, AGALI VILLAGE,
MANNARKKAD TALUK.

2. K.K.RAGHAVAN, S/O. KALI,
KARARA, MUNDANPARA, AGALI VILLAGE,
MANNARKKAD TALUK.

3. SHEEJA, D/O. RAGHAVAN, -DO-.

4. THAMBAN, S/O. KUTTY,
USHA BHAVAN, CHITTUR, AGALI VILLAGE.

5. APPAY ALIAS GOPI, S/O. KUNHI,
PLANTHOTTATHIL, VENGAKADAVU, CHITTUR,
SHOLAYUR VILLAGE.

BY SMT.N.SUDHA DEVI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2962 of 2004

Dated this the 21st day of November 2006

O R D E R

These proceedings arise from a reference made by the Sessions Judge, Palakkad. Three cases were pending before the court of Sessions, Palakkad - S.C.455/2003, S.C.168/2003 and S.C.456/2003.

2. One of the three, that is S.C. 168/2003 relates to offences punishable under the SC & ST (Prevention of Atrocities Act) and of course other offences under the I.P.C. The other two cases that is, S.C.455/2003 and S.C.456/2003 also do arise from the same incident. They are relating to offences punishable under I.P.C. All offences are triable by the Magistrate and no offence in those two cases is triable exclusively by the court of Session.

3. When S.C.168/2003 came up for framing charges under Section 227/228 Cr.P.C, the learned Sessions Judge took the view that no charges are liable to be framed under SC & ST (Prevention of Atrocities Act). Accordingly, charges were framed for the other offences under Section 228 Cr.P.C and the matter was sent to the learned Chief Judicial Magistrate for trial.

4. The other two cases, that is S.C. 455/2003 and 456/2003 are now pending before the learned Sessions Judge. The learned

Sessions Judge has made a reference to the court with the prayer that appropriate directions may be issued to facilitate those two cases also being tried by the learned Chief Judicial Magistrate to whom the earlier case (S.C.168/2003) has been sent for trial under Section 228 Cr.P.C. The request appears to be absolutely justified since no connected case exclusively triable the court of Session is pending before the court of Session. Hence S.C.455/03 and 456/03 need not now be tried by the court of Session. The learned Sessions Judge, according to me, could easily have framed the charges under Section 228 Cr.P.C and sent those cases to the learned Chief Judicial Magistrate for trial. Instead the learned Sessions Judge has chosen to make a reference. However, I am satisfied that the rationale justifying the committal of these two cases (S.C.455/03 and 456/03) has now ceased to exist and operate, S.C.168/2003 having already been sent to the learned Chief Judicial Magistrate under Section 228 Cr.P.C. I am satisfied, in these circumstances, that the revisional jurisdiction of this court under 401 Cr.P.C can be invoked. The committal orders, which led to registration of S.C.455/03 and 456/03 can be set aside and the learned Sessions Judge can be directed to send those two cases to the learned Chief Judicial Magistrate, Palakkad for trial, along with the connected case S.C.168/2003.

C.C.201/04 is the number of the case after re-registration, after the same was sent to the learned Chief Judicial Magistrate under Section 228 Cr.P.C, submits the counsel.

5. In the result, this Crl.M.C is allowed. The orders of committal, which led to registration of S.C.455/03 and 456/03 are set aside. The learned Sessions Judge, Palakkad is directed to forward the records in S.C.455/03 and S.C.456/03 to the learned Chief Judicial Magistrate, Palakkad for trial, simultaneous with C.C.201/2004. The learned Sessions Judge shall forthwith transmit the records to the learned Chief Judicial Magistrate and direct the parties to appear before that court on 11/12/2006. It is submitted that C.C.201/2004 stands listed for trial in January 2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006